

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

fractures. She indicated that the fall occurred at her residence at 6:30 a.m. Appellant's regular work hours were from 7:00 a.m. to 5:30 p.m., Monday through Thursday. She stopped work on June 6, 2016. OWCP assigned the claim File No. xxxxxx599.

On July 12, 2016 appellant also filed an occupational disease claim (Form CA-2) alleging that she fell as a result of her uncontrolled diabetes and suffered three fractures to her shoulder. She noted that she first became aware of her diabetic condition on December 7, 2006. Appellant indicated that her diabetic condition was caused or aggravated by her federal employment on June 5, 2016. She indicated that she fell at an address on Corporate Court, Holtsville, NY. On the form, appellant indicated that "this notice or claim for compensation pay should be filed as a traumatic injury." OWCP assigned the claim File No. xxxxxx624.

On August 1, 2016 OWCP administratively combined File Nos. xxxxxx624 and xxxxxx599, with xxxxxx624 serving as the master file.

In a July 18, 2016 development letter, OWCP advised appellant of the evidence needed to establish her claim. Appellant was asked to respond to specific factual questions, including whether her alleged injury occurred at home, whether she was authorized to work at home, and why the injury, which occurred on a Sunday, occurred on a workday. OWCP afforded appellant 30 days to respond. It also requested that the employing establishment respond to several questions pertaining to whether appellant was in the performance of duty at the time of the alleged injury.

In a July 18, 2016 statement, appellant related that she injured her shoulder at home on June 6, 2016, not June 5, 2016, while she was preparing to go to work. She noted her supervisor completed both the CA-1 and CA-2 forms on her behalf.

In a July 27, 2016 statement, appellant stated that she called her supervisor on June 6, 2016 when she noticed that she had three fractures of her right shoulder. She indicated that she fell at home while preparing to go to work. Appellant advised that she has Type I diabetes and that her sugar level got too low which caused the trauma.

In a July 26, 2016 statement, appellant's supervisor related that appellant called her on June 6, 2016 and advised that she had fallen and was going to the doctor. She stated that appellant was not in the performance of regularly assigned duties at the time of injury. The supervisor indicated that appellant was not permitted or required to work from home as her work takes place in an office setting. She stated that appellant injured herself at her residence. Appellant was not working at the time of injury or performing work duties prior to her regularly scheduled hours when the injury occurred. The supervisor indicated that appellant was not scheduled to work on Sunday, June 5, 2016 and noted that she had put the date on the CA-1 and CA-2 forms. She reiterated that appellant incurred the injury at her residence and at a time when appellant was not working. A position description and a November 7, 2011 reasonable accommodation request were attached.

In a June 22, 2016 statement, the employing establishment controverted the claim indicating that on July 19, 2016, appellant stated that "she filed this claim because she has diabetes. When her blood sugar is too high or too low she falls. The diabetes caused [appellant] to fall. She was at her residence on her lawn when she fell. [Appellant] was getting ready to leave for work."

The employing establishment also noted that under OWCP File No. xxxxxx599, the cause of injury was also “fall to ground 3 fractures to the shoulder area.”

In a June 9, 2016 prescription note, Dr. Izhar Haque, an orthopedic surgeon, noted that appellant was not allowed to drive or work for six to eight weeks until her right clavicle fracture had healed.

A June 7, 2016 emergency room hospitalization note indicated that appellant was seen for fractured right clavicle. A June 23, 2016 note indicated that appellant was not to work.

In a July 15, 2016 report, Dr. Athena Zias Dilena, an internist, noted that appellant had Type 1 diabetes that was treated with an insulin pump and was not regulated. She also noted that appellant had a right comminuted displaced mid-shaft clavicle fracture that precluded her from working.

In an August 8, 2016 duty status report (Form CA-17), Dr. Dilena indicated on June 6, 2016 that appellant fell at home and fractured her right shoulder (clavicle). In an August 8, 2016 attending physician’s report (Form CA-20), she noted that on June 6, 2016 appellant sustained a displaced right clavicular fracture. Dr. Dilena indicated that the fracture had not healed. She opined that appellant was unable to perform her work-related duties and was totally disabled since June 6, 2016. In an undated Family and Medical Leave Act form, Dr. Dilena noted that appellant had an unhealed right displaced clavicular fracture and had no use of the right arm. She indicated that the condition commenced June 6, 2016.

In an August 8, 2016 report, Dr. Jeffrey Goldstein, a Board-certified orthopedic surgeon, noted that appellant’s right mid-shaft clavicle fracture was displaced without evidence of healing two months from her injury. Limitations with the use of the right arm were discussed.<sup>2</sup>

By decision dated September 29, 2016, OWCP denied the claim finding that appellant had not established an injury causally related to her federal employment as the alleged injury had not occurred in the performance of duty.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the

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<sup>2</sup> OWCP also received medical reports pertaining to appellant’s diabetic condition. These included an October 21, 2005 medical report from Dr. Leonard Gioia, an endocrinologist Board-certified in internal medicine, and November 4, 2010 and July 15, 2016 medical reports from Dr. Jessica Cella, also an endocrinologist Board-certified in internal medicine.

<sup>3</sup> *Supra* note 1.

employment injury.<sup>4</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>5</sup>

Whether an injury occurs in the performance of duty is a preliminary issue before the merits of the claim are adjudicated.<sup>6</sup>

The phrase “sustained while in the performance of duty” is regarded as the equivalent of the coverage formula commonly found in workers’ compensation law, namely, arising out of and in the course of employment.<sup>7</sup> In the course of employment relates to the elements of time, place, and work activity. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in his or her master’s business, at a place when he or she may reasonably be expected to be in connection with his or her employment, and while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto. As to the phrase in the course of employment, the Board has accepted the general rule of workers’ compensation law that, as to employees having fixed hours and places of work, injuries occurring on the premises of the employing establishment, while the employees are going to and from work, before or after working hours or at lunch time, are compensable.<sup>8</sup>

Conversely, as a general rule, off-premises injuries sustained by employees having fixed hours and place of work, while going to or coming home from work or during a lunch period, are not compensable as they do not arise out of and in the course of employment, but are merely the ordinary, nonemployment hazards of the journey itself, which are shared by all travelers.<sup>9</sup>

OWCP’s procedures address off-premises injuries sustained by workers at home:

“Ordinarily, the protection of [FECA] does not extend to the employee’s home, but there is an exception when the injury is sustained while the employee is performing official duties. In situations of this sort, the critical problem is to ascertain whether at the time of injury the employee was in fact doing something for the employing establishment. The official superior should be requested to submit a statement showing--

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<sup>4</sup> C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>5</sup> S.P., 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> P.L., Docket No. 16-0631 (issued August 9, 2016); *see also M.D.*, Docket No. 17-0086 (issued August 3, 2017).

<sup>7</sup> A.K., Docket No. 16-1133 (issued December 19, 2016).

<sup>8</sup> *Narbik A. Karamian*, 40 ECAB 617, 218 (1989). The Board has also applied this general rule of workers’ compensation law in circumstances where the employee was on an unauthorized break. *See Eileen R. Gibbons*, 52 ECAB 209 (2001).

<sup>9</sup> M.T., Docket No. 16-0927 (issued February 13, 2017).

- (a) What directives were given to or what arrangements had been made with the employee for performing work at home or outside usual working hours;
- (b) The particular work the employee was performing when injured; and
- (c) Whether the official superior is of the opinion the employee was performing official duties at the time of the injury, with appropriate explanation for such opinion.”<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not established that she sustained an injury in the performance of duty on June 6, 2016, as alleged.

On the claim forms, appellant alleged an injury to her shoulder when she fell to the ground on June 5, 2016. On the CA-1 form, she indicated that she fell at her residence prior to her scheduled work hours. On the CA-2 form, appellant noted that the fall occurred at an address on Corporate Court. She also noted that she had uncontrolled diabetes. Appellant’s supervisor filled out both claim forms.

OWCP explained to appellant, in an August 2, 2016 letter, the necessity of clarifying the event in as much detail as possible and of providing additional information about the work factors claimed to have caused or contributed to the fall and the claimed shoulder condition. In July 18 and 27, 2016 statements, appellant related that she injured her shoulder at home on June 6, 2016 while she was preparing to go to work, not on Sunday June 5, 2016. In her July 27, 2016 statement, she explained that she called her supervisor on June 6, 2016 once she noticed that she had three shoulder fractures. Appellant explained that she had Type 1 diabetes and that her injury occurred when her sugar blood level got too low. However, she did not fully respond to the factual questionnaire. While she appears to indicate that the incident occurred on June 6, 2016, appellant did not clarify whether there were two separate incidents of a fall as she had indicated on her claim forms. Furthermore, she did not provide any explanation as to the work duties she was performing at the time of the alleged injury.

As appellant did not offer an adequate response to OWCP’s request for additional factual information pertaining to the claimed work event, the Board finds that appellant’s statements contained on her claim forms and in her general responses are alone insufficient to establish that her alleged injury occurred in the performance of duty.<sup>11</sup>

Even though appellant listed two separate addresses as the place where the injury occurred, as she also related that the injury occurred at 6:30 a.m., prior to the start of her 7:00 a.m. work shift, the totality of evidence supports a finding that appellant’s alleged injury occurred at home,

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<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.5(f)(1) (August 1992); see also *S.F.*, Docket No. 09-2172 (issued August 23, 2010).

<sup>11</sup> See *A.S.*, Docket No. 16-0944 (issued November 2, 2016).

while she was getting ready for work. The Board notes that such activities are not considered to be in the performance of duty. As a general rule under FECA off-premises injuries sustained by employees having fixed hours and place of work, while going to or coming home from work are not compensable as they do not arise out of or in the course of employment but are merely the ordinary, nonemployment hazards of the journey itself, which are shared by all travelers.<sup>12</sup> Appellant has not otherwise alleged that the performance of any actual work duties at 6:30 a.m. on June 6, 2016 caused her alleged injury. As such, appellant has not established that she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto at the time of the alleged injury.<sup>13</sup>

OWCP requested that the employing establishment respond to questions as to whether appellant was in the performance of duty when the alleged injury occurred.<sup>14</sup> Appellant's supervisor responded on July 26, 2016 that appellant was not permitted or required to work from home and that she was not performing any work duties when the alleged injury occurred.

For these reasons, based upon appellant's own statements as well as the statement from her supervisor, the Board finds that appellant has not established that she sustained an injury in the performance of duty on June 6, 2016, as alleged.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury on June 6, 2016 while in the performance of duty, as alleged.

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<sup>12</sup> *M.P.*, Docket No. 10-0054 (issued July 27, 2010).

<sup>13</sup> *Supra* note 7.

<sup>14</sup> *Supra* note 9.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 29, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 14, 2018  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board